IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.841 of 2007

Arunachalam .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate and
District Collector
Vellore District
Vellore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus directing the respondent, to call for the records in C3.D.O.No. 42/2007 dated 31.5.2007 passed by the Second Respondent approved and confirmed by the first respondent to set aside the same and direct the Respondents to produce the body of mine Viz Arunachalam, who has been detained in the Central Prison at Vellore in TPDA.5173.

For Petitioner : Mr.T.R.Radhakrishnan
For Respondents : Mr.P.Kumaresan
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 31.5.2007 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short “the Act”) branding him as a "Goonda".

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2. The order of detention dated 31.5.2007 was passed on the basis of ground case in Crime No.58 of 2007 for alleged commission of offence under Section 393 of I.P.C. The allegation against the detenu was that on 18.2.2007 at about 04.00 hours, one Mubeen was sleeping along with his brother in his house situated at Door No.156, Paradarami Main road, Paradarami and due to dogs barking, he came out of the house with a torch light. At that time, the detenu suddenly showed a pen knife against Mubeen, threatened him not to shout, get in and bring all the jewels and cash, otherwise he would murder. Mubeen suddenly turned and attacked the detenu over his face. On hearing noise, the brother of Mubeen also came out of the house. On seeing this, the detenu ran away by shouting that he would kill them. Due to the activities of the detenu, Mubeen, his family members and the nearby public struck panic. Mubeen lodged a complaint. During investigation, the detenu was arrested on the same day and remanded to judicial custody.

3. The second respondent, taking the above case as a ground case and six adverse cases pending against the detenu for the offences punishable under Sections 379, 457, 380, 392 and 397 of IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay in considering the representation of the detenu, we do not propose to go into the other aspects, as the said ground of belated consideration of the representation has to succeed. According to the learned counsel, there was a delay in preparing the rejection letter, which vitiates the order of the detention.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 31.5.2007. The detenu has made a representation dated 3.7.2007 to the Government, which was received on 4.7.2007. Remarks were called for from the detaining authority on 6.7.2007, who in turn, called for parawar remarks from the sponsoring authority and on receipt of the same by the Government on 23.7.2007, the file was circulated on 25.7.2007 and the Under Secretary and the Deputy Secretary dealt with the file on 31.7.2007 and on 1.8.2007, the Minister concerned rejected the same. It is contended that even though the Minister concerned rejected the representation of the detenu on 1.8.2007, the rejection letter was prepared only on 7.8.2007 and in the absence of convincing reply on behalf of the State, the order of detention vitiates. We find some force in the contention of the learned counsel. Even excluding the intervening public holidays viz., 4.8.2007 and 5.8.2007 (Saturday and Sunday), there is a delay of four days in preparing the rejection letter.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

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"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, admittedly, there is a delay of four days in preparing the rejection letter and in the absence of valid explanation for the said delay, in our considered opinion, the same vitiates the order of detention. We are, therefore, inclined to allow this petition. Accordingly, the order of detention dated 31.5.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Magistrate and
   District Collector
   Vellore District, Vellore.

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3. The Superintendent
Central Prison
Vellore. (In duplicate to the communication to Detenue)

4. The Public Prosecutor
High Court, Madras.

5. The Joint Secretary to Govt,
Public (Law and Order)
Fort St George, Madras -9.

TS (co)
sg 04/10/07

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